

UNITED STATES DISTRICT COURT

for

**EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

U.S.A. vs. James Novak

Docket No. 7:09-CR-168-1F

Petition for Action on Supervised Release

COMES NOW John A. Cooper, probation officer of the court, presenting a petition for modification of the Judgment and Commitment Order of James Novak, who, upon an earlier plea of guilty to 21 U.S.C. §§846, 841(a)(1) and 841(b)(1)(A), Conspiracy to Distribute 500 Grams or More of Methamphetamine, and 18 U.S.C. § 924(c)(1)(A)(i), Possession of a Firearm in Furtherance of a Drug Trafficking Crime, was sentenced by the Honorable Curtis L. Collier, U.S. District Judge, Eastern District of Tennessee on September 2, 2005, to the custody of the Bureau of Prisons for a term of 57 months. Novak was released to the Eastern District of NC on February 27, 2009, and jurisdiction was subsequently transferred. On March 23, 2011, Novak appeared before The Honorable James C. Fox on a Motion for Revocation for failing to participate in drug treatment and testing, failure to submit truthful and complete reports, failure to report to the probation officer as directed, and failure to work regularly. The court revoked the term of supervised release and imposed a 36 month term of imprisonment which was subsequently reduced to 24 months pursuant to a Remand Order from the Fourth Circuit Court of Appeals. It was further ordered that upon release from custody, the defendant be placed on supervised release for a term of 24 months under the standard conditions adopted by the court and the following additional conditions:

1. The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.
2. The defendant shall abstain from the use of any alcoholic beverages, shall not associate with individuals consuming alcoholic beverages, shall not frequent business establishments whose primary product to the consumer is alcoholic beverages, and shall not use any medication containing alcohol without the permission of the probation office or a prescription from a licensed physician.
3. The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

James Novak was released from custody on December 2, 2013, at which time the term of supervised release commenced.

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RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

On December 30, 2013, the probation officer made an unannounced home visit to Novak's residence and when questioned by the officer, Novak admitted to drinking alcohol since his release. Furthermore, a urine test taken tested positive for marijuana and cocaine. Novak signed an Admission of Drug Use form admitting to using marijuana and cocaine on December 29, 2013.

James Novak is already in violation of his second term of supervised release. Following the revocation hearing held on March 23, 2011, Novak was committed to the custody of the Bureau of Prisons, and while housed at a facility in Alabama, he escaped. He was subsequently apprehended and indicted in the Middle District of Alabama. The court sentenced Novak to an additional term of imprisonment of 12 months and 1 day consecutive to the term of imprisonment imposed by this court. The sentencing court in Alabama also imposed an additional term of supervised release to be served concurrently with the supervised release term imposed by this court. Novak has only been on supervision for 30 days and is already using alcohol and drugs. He has been reprimanded for his behavior and advised that further violations will result in a hearing before the court. As such, our office recommends supervision be continued at this time but modified to require Novak to serve 2 days in jail. He will be re-instated in our contract drug and alcohol treatment program. Should he incur another positive drug test, our office will file a Motion for Revocation and request that a hearing be held.

The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

PRAYING THAT THE COURT WILL ORDER that supervised release be modified as follows:

1. The defendant shall be confined in the custody of the Bureau of Prisons for a period of 2 days, and shall abide by all rules and regulations of the designated facility.

Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert L. Thornton
Robert L. Thornton
Supervising U.S. Probation Officer

/s/ John A. Cooper
John A. Cooper
U.S. Probation Officer
Phone: 910-815-4857
Executed On: January 6, 2014

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ORDER OF COURT

Considered and ordered this 7th day of January, 2014, and ordered filed and made a part of the records in the above case.

James C. Fox
James C. Fox
Senior U.S. District Judge